UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE SCHERZINGER CORPORATION

and Case 09–CA–165460

ROBERT COLLEY, An Individual

Daniel Goode, Esq.,
for the General Counsel.
Katharine C. Weber, Esq., and
Ryan M. Martin, Esq.,
*(*Jackson Lewis, P.C.)
Cincinnati, Ohio,
for the Respondent.
Ryan Keith Hymore, Esq.,
(Mangano Law Offices, Co. L.P.A.)
Cincinnati, Ohio,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. Robert Colley, an individual charging party, (the Charging Party) filed the charge in this case on December 3, 2015. The Director of Region 9 of the National Labor Relations Board (the Board) issued the complaint on February 29, 2016, and an amended complaint on April 21, 2016. The complaint, as amended, alleges that The Scherzinger Corporation (Respondent) interfered with employees' Section 7 rights to engage in collective action and violated Section 8(a)(1) of the National Labor Relations Act (the NLRA) when it required employees to sign, as a condition of continued employment, an agreement to forgo any rights those employees would otherwise have to resolve employment disputes by collective or class action and to address any complaints regarding their terms and conditions of employment only to management. The complaint further alleges that the Respondent violated Section 8(a)(1) of the NLRA by seeking to enforce the agreement in response to a class action that the Charging Party filed in federal district court over alleged violations of the Fair Labor Standards Act (FLSA) and state wage and hour laws.

The Respondent filed a timely answer to the Board complaint in which it denied committing any violation of the NLRA. Before the scheduled hearing in this case commenced, I

granted the parties' joint motion to have the allegations in the complaint decided without a hearing based on the stipulated record submitted by the parties. Based on the stipulated record submitted by the parties, and after considering their briefs, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates a pest control business at its facility in Cincinnati, Ohio, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the NLRA.

II. ALLEGED UNFAIR LABOR PRACTICES

A. RESPONDENT REQUIRES EMPLOYEES TO AGREE TO COMPLAINT PROCEDURES

The Respondent is a provider of pest control services. Since at least August 2015, it has required its employees to sign and be bound by a document entitled "Scherzinger Complaint Procedures" (Complaint Procedures) as a condition of continued employment. The Respondent organizes those procedures into 6 steps, and prefaces them by stating that employees who "have a problem or complaint concerning [their] employment (including wages, hours, working conditions, etc.) . . . are expected to take the appropriate steps" under the Complaint Procedures. Those procedures begin with an internal review (steps 1 through 4) and, if the dispute is not resolved, the employee may invoke mediation before a mediator of the Respondent's choosing (step 5). If mediation does not resolve the dispute, either party may request binding individual arbitration (step 6). The Complaint Procedures provide that this arbitration process is the sole and exclusive means for "adjudicating" any unresolved employment-related disputes (except for representative claims that cannot be waived or claims that cannot be arbitrated as a matter of law).

The Complaint Procedures provide, in part:

> **Step 6. Arbitration:** If the Dispute remains unresolved thirty (30) days after the [mediation] Meeting, either party may give written Request to the other party to engage in binding arbitration ("Arbitration").
>
> > c.[1] Except for representative claims which cannot be waived under applicable law, the Parties agree that any and all unresolved issues shall be solely, finally, exclusively and conclusively adjudicated through Arbitration before American Arbitration Association ("AAA") in Cincinnati, Ohio, pursuant to the rules of the AAA. The Company agrees to pay the cost of the Arbitrator and the Parties agree that they shall be responsible for any costs they individually incur in connection with the Arbitration, including attorney's fees. Employee waives any right Employee may have to seek relief by or through a collective or class action. Arbitration shall proceed solely on an individual basis or on bases involving claims

[1] Subsection (c.) is the first subsection after the step 6 (Arbitration) heading. Subsections (a.) and (b.) are found after the step 5 (Mediation) heading.

> brought in a purported representative capacity on behalf of others. The Arbitrator's authority to resolve and make written awards is limited to claims between the employee and the Company alone. Claims may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration.
>
> d. The Parties understand and fully agree that by entering into this Agreement to arbitrate , they are giving up their constitutional right to have a trial by jury, and are giving up their normal rights of appeal following the rendering of a decision except as the law provides for judicial review of arbitration decisions. The Parties anticipate that by entering into this Agreement, they will gain the benefits of a speedy and less expensive dispute resolution procedure.
>
> e. Claims not covered by this Agreement are claims for workers' compensation, unemployment compensation benefits or any other claims that, as a matter of law, the Parties cannot agree to arbitrate. Nothing in this Agreement shall be interpreted to mean that Employee is precluded from filing complaints with the federal Equal Employment Opportunity Commission or the National Labor Relations Board.
>
> f. Notwithstanding the foregoing, a Party may seek injunctive relief from the Hamilton County Court of Common Pleas, in the event the Party believes it will suffer irreparable harm or to maintain the status quo, including any breach of this Agreement. The Company and employee also agree that they are subject to the exclusive venue and jurisdiction of the Hamilton County Court of Common Pleas in the event either seeks injunctive relief or in the event the Company or the employee seek[s] to confirm an Arbitration award.

The employees are required to sign the Complaint Procedures and to "agree to rely on [the] complaint procedures to resolve issues related to [their] employment with [the Respondent] both during and after [their] employment."

B. Respondent Seeks to Enforce Prohibition on Complaint Procedures

On November 8, 2015, Colley (the charging party), on behalf of himself and similarly situated employees of the Respondent, filed a class and collective action complaint in the United States District Court for the Southern District of Ohio. The district court complaint alleges that the Respondent violated the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., and wage and hour laws of the State of Ohio and the Commonwealth of Kentucky. On December 2, 2015, the Respondent filed an answer to the district court complaint in which it asserted that the class action complaint was barred to the extent that Colley or any member of the proposed class had agreed to be bound by the Complaint Procedures that, as set forth above, require that employees' claims regarding wages, hours and working conditions be arbitrated and which preclude employees from seeking resolution of such claims in federal district court, or through any class litigation or class arbitration. On December 4, 2015, Steven Davenport, an employee of the Respondent, filed an opt-in consent form to join the plaintiff

class in the district court action filed by Colley. The Respondent filed a motion to dismiss Davenport from the class litigation on the basis that he had signed the Respondent's Complaint Procedures, and thereby agreed to arbitrate the claims asserted in the class action.[2]

C. Complaint Allegations

The complaint alleges that the Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights, and violated Section 8(a)(1): since August 2015, by requiring employees, as condition of continued employment, to agree to forgo any rights to the resolution of employment-related disputes through collective or class action and by requiring them to address any complaints regarding their terms and conditions of employment only to management; and by attempting to enforce that agreement by asserting it as a defense to, and as the basis for a motion to dismiss Davenport from, the class and collective action that Colley filed in district court.

III. Discussion

A. Requirement That Employees Waive Right to Seek Relief Regarding Terms and Conditions of Employment Through Collective or Class Action.

Section 7 of the NLRA protects the right of employees to engage in concerted legal action for their mutual aid and protection, including, as the Supreme Court has recognized, by concertedly seeking to vindicate their rights through "resort to administrative and judicial forums" or other "channels outside the immediate employee-employer relationship." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565-566 (1978).[3] Accordingly, the Board has held, in *D.R. Horton* and in multiple subsequent cases, that an employer interferes with employees' substantive Section 7 rights to engage in concerted activity, and violates Section 8(a)(1), "when it requires employees covered by the Act, as a condition of their employment, to sign an agreement that precludes them from filing joint, class, or collective claims addressing their wages, hours or other working conditions against the employer in any forum, arbitral or judicial." *D.R. Horton, Inc.*, 357 NLRB 2277, 2277 (2012),[4] enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), petition for rehearing en banc denied (5th Cir. No. 12-60031, April 16, 2014), see also *Tarlton and Son, Inc.*, 363 NLRB No. 175 (2016); *Amerisave Mortgage Corporation*, 363 NLRB No. 174 (2016), *Bloomingdale's Inc.*, 363 NLRB No. 172 (2016), and *Murphy Oil USA, Inc.*, 361 NLRB No. 72

[2] Subsequent to the submission of the stipulated record, the district court, in an order dated May 25, 2016, granted the Respondent's motion to dismiss Davenport as a party plaintiff from the case. *Colley v. Scherzinger Corp.*, 2016 U.S. Dist. LEXIS 68574 (S.D. Ohio May 25, 2016).

[3] See also *National Licorice Co. v. NLRB*, 309 U.S. 350, 360-361 (1940) (striking down individual employment contracts that require employees to present their discharge grievances individually because such contracts are contrary to the NLRA); B*rady v. Nat'l Football League*, 644 F.3d 661, 673 (8th Cir. 2011) (filing a collective or class action suit constitutes "concerted activity" under Section 7) *Altex Ready Mixed Concrete Corp. v. NLRB*, 542 F.2d 295, 297 (5th Cir. 1976) ("filing by employees of a labor related civil action is protected activity under section 7"); *Leviton Mfg. Co. v. NLRB*, 486 F.2d 686, 689 (1st Cir. 1973) (same).

[4] Section 8(a)(1) makes it unlawful for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." Thus, "requiring that [covered employees] waive their right to engage in protected, concerted activity" in the form of class or collective legal action regarding their working conditions, runs afoul of the "the core of the prohibitions contained in Section 8." *D.R. Horton*, supra.

(2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015); cf. *Logisticare Solutions, Inc.*, 363 NLRB No. 85 (2015), slip op. at 1 (an employer violates the NLRA by requiring employees to waive their right to participate as a member of a class or collective action lawsuit, even if it does not require them to submit their complaints to arbitration). The Board has also held that an employer commits a further violation of Section 8(a)(1) if it seeks to enforce an unlawful rule of this type by moving to strike the class and collective allegations in employees' work-related lawsuit, *Convergys Corp.*, 363 NLRB No. 51 (2015), or by moving to dismiss employees' collective court action and compel them to arbitrate their mutual, work-related, claims individually, *Murphy Oil*, 361 NLRB slip op. at 2 and 19.

There is no dispute that the Respondent required employees, as a condition of continued employment, to sign the Complaint Procedures, which prohibit employees from filing joint, class or collective claims relating to their working conditions in any forum arbitral or judicial, and require employees to "adjudicate" such claims exclusively through individual arbitration. In addition, the Respondent has sought to enforce that restriction by asserting the Complaint Procedures as a defense to Colley's district court class action concerning wages and hours and by moving to bar participation by Davenport, a plaintiff/employee who opted into the class. Under the Board's decisions in *D.R. Horton*, *Murphy Oil*, *Convergys*, et al. this conduct by the Respondent violated Section 8(a)(1) of the NLRA.

The Respondent does not seek to distinguish its conduct from that which the Board found to be unlawful in *D.R. Horton* and subsequent cases, but rather defends by arguing that the Board's reasoning in those cases was defective, that the Federal Arbitration Act (FAA), 9 U.S.C. Section 1, et seq., trumps the NLRA, and that the Board's precedent should be overturned. The Respondent's arguments in this regard are for the Board to consider, not me, since I am bound to follow Board precedent that has not been reversed by the Supreme Court. See *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004); *Hebert Industrial Insulation Corp.*, 312 NLRB 602, 608 (1993); *Lumber & Mill Employers Assn.*, 265 NLRB 199 fn. 2 (1982), enfd. 736 F.2d 507 (9th Cir. 1984), cert. denied 469 U.S. 934 (1984). I note, at any rate, that in *D.R. Horton* and *Murphy Oil* the Board provided detailed and comprehensive support for its decisions and that the Respondent's argument for overturning those decisions is deficient in a number of obvious ways. For instance, the Respondent's brief does not mention the precedent most prominently cited in the Board's *D.R. Horton* and *Murphy Oil* analysis –- i.e., the Supreme Court's decision in *Eastex, Inc.*, supra, which stands for the proposition that when employees seek to vindicate their employment-related claims through resort to administrative and judicial forums they are engaged in concerted activity that is protected by Section 7 of the NLRA. In addition, although the Respondent relies on what it describes as the "mountain of precedent" rejecting the Board's conclusion, it make no mention of the Seventh Circuit's recent decision in *Lewis v. Epic Systems*, *Corp.*, which agrees with the Board's conclusion, as had the trial court before it. 2016 Westlaw 3029464 (7th Cir. 2016). In *Epic Systems* the Seventh Circuit analyzed the issue in depth, gave consideration to both the NLRA and the FAA, and arrived at the conclusion that the Board was correct in holding that an employer violates the NLRA by requiring employees, as a condition of continued employment, to waive the right to participate "in any class collective, or representative proceeding" regarding wage and hour claims. The Seventh Circuit panel unanimously found that such an agreement was unenforceable and denied the employer's motion to compel arbitration. In its analysis, the Circuit Court endorsed the Board's view that the Section 7 right to act collectively is a substantive (rather than a procedural) right, *Epic Systems*, supra at *7 and *9, that Congress granted that substantive right for the express purpose of addressing the "inequality of bargaining power" between employees and employers, 29 U.S.C. Section 151, and that the right is at the very heart of the NLRA's function. *Epic Systems*, supra at *2 and *7, quoting *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 835 (1984) and *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33 (1937). The

Seventh Circuit also agreed with the Board's view that its holding did not contravene the FAA inasmuch as the FAA specifically provides that contracts to arbitrate are invalid and nonenforceable "upon such grounds as exist at law or in equity for the revocation of any contract" and that a provision waiving collective legal action is unlawful under the NLRA and therefore, "meets the criteria of the FAA's saving clause for nonenforcement." *Epic Systems*, supra, at *5, quoting 9 U.S.C. Section 2. Thus while it is true that the Courts of Appeals for the Fifth and Eighth Circuit analyzed the issue and reached a conclusion contrary to the Board's, see *Cellular Sales of Missouri v. NLRB*, 2016 Westlaw 3093363 (8th Cir. June 2, 2016), *D.R. Horton*, *Inc. v. NLRB*, 737 F.3d 344, 357 (5th Cir. 2013), and that the Second Circuit disagreed with the Board without substantively engaging the arguments, see *Sutherland v. Ernst & Young LLP,* 726 F.3d 290 (2d Cir. 2013), there is a circuit split[5] that will likely have to be resolved by the Supreme Court, not the one-sided circumstance portrayed by the Respondent.

For reasons discussed above, I find that the Respondent interfered with employees' Section 7 rights in violation of Section 8(a)(1) of the NLRA since August 2015 by requiring employees, as a condition of continued employment, to agree to forgo any rights to the resolution of employment-related disputes through collective or class action and by attempting to enforce that agreement by asserting it as a defense to, and as the basis for a motion to dismiss Davenport from, the class action Colley filed in district court.

B. Alleged Requirement That Employees Address Complaints Concerning Terms and Conditions Only to Management.

Section 7 protects the right of employees to "seek to improve working conditions through resort to . . . channels outside the immediate employee-employer relationship." *Eastex, Inc. v. NLRB*, 437 U.S. at 565-566. The General Counsel alleges that, in addition to violating Section 8(a)(1) of the NLRA by prohibiting employees from pursuing class or collective legal action as found above, the Respondent's Complaint Procedures also violate Section 8(a)(1) by requiring employees to address their work-related complaints exclusively to management, thereby infringing on their right to use channels outside the immediate employee-employer relationship. The question here is whether the Complaint Procedures would, in fact, reasonably tend to chill employees from exercising their Section 7 right to resort to such outside channels. See *T-Mobile USA, Inc.*, 363 NLRB No. 171, slip op at 1 (2016), citing *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). Under the Board's standards, if a work rule does not explicitly restrict Section 7 rights, the General Counsel may still establish a violation by showing: (1) that employees would reasonably construe the language to prohibit Section 7 activity; (2) that the rule was promulgated in response to union activity: or (3) the rule has been applied to restrict the exercise of Section 7 rights. Id., citing *Lutheran Heritage*, 343 NLRB 646 (2004). "In construing rules, *Lutheran Heritage* teaches that they are to be given a reasonable reading, and are not to be considered in isolation." *T-Mobile*, slip op. at 2. "[A]ny ambiguity in the rule must be construed against the drafter – here, the Respondent." Id., citing *Lafayette Park*, 326 NLRB at 825.

The General Counsel does not claim that the Complaint Procedures explicitly, or in their application, prohibit Section 7 activity by requiring employees to address any complaints exclusively to the Respondent. Nor does the General Counsel claim that the Complaint Procedures were promulgated in response to union activity. The General Counsel's argument is, instead, based on the contention that "[w]hile the [Respondent's Complaint Procedure] does

[5] In *Epic Systems*, the Seventh Circuit addressed contrary circuit precedent, as well as the relevant supportive Supreme Court precedent in reaching its conclusion.

not on its face prohibit employees from approaching someone other than Respondent concerning work-related complaints, 'reasonable employees would construe the language to prohibit Section 7 activity.'" Brief of General Counsel at 9. The General Counsel suggests that, reading the Complaint Procedures as a whole, employees would reasonably understand that the Respondent was prohibiting them from bringing their allegations to the Board or discussing their work-related complaints with other employees. The General Counsel's contentions in this regard are unpersuasive for the reasons discussed below.

The Complaint Procedures cannot reasonably be understood to prohibit employees from bringing their complaints to the Board given that the procedures expressly state that "Nothing in this Agreement shall be interpreted to mean that Employee is precluded from filing complaints with . . . the National Labor Relations Board." The General Counsel encourages me to presume that employees would reasonably overlook this clause because it is "buried in the bottom of page two of the [Complaint Procedures]" and, further, because employees might understand the clause to apply only to the arbitration procedure, not to the internal process and mediation. I disagree. First, the language stating that Board filings are not prohibited cannot reasonably be characterized as "buried," if for no other reason than that the entire Complaint Procedures document is barely over two pages long. The language permitting Board filings is included where an employee would reasonably expect to find it – i.e., in one of two concluding subsections dedicated to identifying employee rights and recourses that are not barred by the Complaint Procedures. Given the brevity of the document, the clarity of the language with which it permits Board filings, and the logical placement of that language within the document, I conclude that employees would not, and could not reasonably, construe that policy as a whole to prohibit employees from bringing complaints to the Board. Second, the clause regarding filings with the Board clearly states that such filings are not prohibited by anything in "the agreement." The agreement is a single document encompassing internal review, mediation and arbitration, and the General Counsel does not point to any language showing that, contrary to the plain language, the clause exempting Board complaints from "the agreement" only exempts such complaints from one part of the agreement.

The General Counsel also suggests that the policy is unlawful because it "does not explicitly make clear that it is not intended to prevent employees from speaking to each other" about work-related issues. Brief of the General Counsel at 10. The notion that the Respondent was required to include an explicit disclaimer might be persuasive if there was something in the Complaint Procedure suggesting that such communications were prohibited in the first place. However, the General Counsel points to no language that prohibits, limits, or even mentions, employee communications among themselves. The existence of a procedure governing how employees are to present their complaints to the Respondent does not, without more, suggest that employees cannot also discuss their complaints among themselves. In these circumstances, the General Counsel attempts to place an unfair burden on the Respondent by arguing that it should reasonably be understood to be prohibiting protected activity because it did not state that such activity was not prohibited. I conclude that employees would not reasonably understand the Complaint Procedures to prohibit them from discussing work-related issues with co-workers or to otherwise require employees to bring their complaints exclusively to the attention of the company.

I am not persuaded to reach a different conclusion by the General Counsel's citation to *Kinder-Care Learning Center*, 299 NLRB 1171 (1990). In that case, the Board found that a daycare center violated the NLRA by maintaining a rule that mandated, on threat of discipline (up to and including termination), that employees resolve their work-related complaints through the company's process and not discuss those issues with customers, including with co-workers who were also customers. The rule in the Respondent's Complaint Procedures is not

comparably restrictive because, inter alia: (1) the Respondent's rule, unlike the rule in *Kinder-Care*, does not state that employees are prohibited from discussing work-related complaints with customers or employees; (2) the Respondent only states an *expectation* that employees will bring their complaints to the company, not, as in *Kinder-Care*, a *requirement* that employees bring their complaints to the company as the means of resolving those complaints; and (3) the Respondent, unlike the employer in *Kinder-Care* does not state, or suggest, that employees will be disciplined if they discuss work-related complaints with other employees or otherwise pursue them through channels outside the employer-employee relationship. To the contrary, the Respondent, unlike the employer in *Kinder-Care*, explicitly states that employees are not prohibited from bringing their complaints to the Board and the Equal Employment Opportunity Commission.

For the reasons discussed above, the allegation that the Respondent violated Section 8(a)(1) by requiring employees to address any complaints regarding their terms and conditions of employment exclusively to the Respondent should be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. By requiring employees, as a condition of continued employment, to agree to forgo the right to seek resolution of employment-related disputes through collective or class action and by attempting to enforce that agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) of and (7) of the NLRA and has violated Section 8(a)(1) of the NLRA.

3. The record does not show that the Respondent required employees to address complaints regarding terms and conditions of employment exclusively to management in violation of Section 8(a)(1) of the NLRA.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Consistent with the Board's usual practice in cases involving unlawful litigation, I shall order the Respondent to reimburse the plaintiffs for all reasonable expenses and legal fees, with interest,[6] incurred in opposing the Respondent's unlawful efforts to enforce the agreement by asserting it as a defense to, and as the basis for a motion to dismiss Davenport from, the class action Colley filed in district court under the FLSA and state wage and hour laws. See *Murphy* Oil, slip op. at 21, Bill *Johnson's Restaurants v. NLRB*, 461 U.S. 731, 747 (1983) ("If a violation is found, the Board may order the employer to reimburse the employees whom he had wrongfully sued for their attorneys' fees and other expenses" and

[6] Interest is to be computed in the manner prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). See *Teamsters Local 776 (Rite Aid)*, 305 NLRB 832, 835 fn. 10 (1991) ("[I]n make-whole orders for suits maintained in violation of the Act, it is appropriate and necessary to award interest on litigation expenses."), enfd. 973 F.2d 230 (3d Cir. 1992), cert. denied 507 U.S. 959 (1993).

"any other proper relief that would effectuate the policies of the Act."). I shall also order the Respondent to rescind and revise the Complaint Procedures, to notify employees and the district court that it has done so, and to inform the district court that it no longer opposes the plaintiffs' claims on the basis of the Complaint Procedures.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[7]

ORDER

The Respondent, The Scherzinger Corporation , its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and/or enforcing any agreement or rule that requires employees, as condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Scherzinger Complaint Procedures ("Complaint Procedures") or revise them to make clear to employees that the Complaint Procedures do not constitute a waiver of employees' rights to maintain employment-related joint, class, or collective actions.

(b) Notify all current and former employees who were required to sign, or otherwise agree to, the Complaint Procedures that the Complaint Procedures have been rescinded or revised and, if revised, provide them a copy of the revised Complaint Procedures.

(c) Notify the United States District Court for the Southern District of Ohio that it has rescinded or revised the Complaint Procedures upon which it based a defense and motion to dismiss Steven Davenport, and any other plaintiffs, in the collective action filed by Robert Colley under the FLSA and state wage and hour laws, and inform the court that it no longer opposes that action on the basis of the Complaint Procedures.

(d) In the manner set forth in the remedy section of this decision, reimburse the plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing the Respondent's unlawful efforts to enforce the Complaint Procedures by asserting it as a defense to, and as the basis for a motion to dismiss Davenport and any other plaintiffs from, the class action Colley filed in district court under the FLSA and state wage and hour laws.

(e) Within 14 days after service by the Region, post at its facility in Cincinnati, Ohio, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region Nine, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps

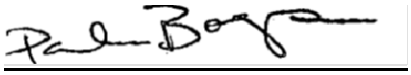
[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

8 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2015.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 17, 2016



PAUL BOGAS
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain and/or enforce an agreement or rule that requires you, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the Scherzinger Complaint Procedures ("Complaint Procedures") or revise them to make clear that the Complaint Procedures do not constitute a waiver of employees' rights to maintain employment-related joint, class, or collective actions.

WE WILL notify you that the Complaint Procedures have been rescinded or revised and, if revised, provide you with a copy of the revised Complaint Procedures.

WE WILL notify the United States District Court for the Southern District of Ohio that we have rescinded or revised the Complaint Procedures upon which we based a defense and motion to dismiss Steven Davenport, and any other plaintiffs, in the collective action filed by Robert Colley under the FLSA and state wage and hour laws, and inform the district court that we no longer oppose that action on the basis of the Complaint Procedures.

WE WILL reimburse the plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing our unlawful efforts to enforce the Complaint Procedures by

asserting them as a defense to, and as the basis for a motion to dismiss Davenport and any other plaintiffs from, the class action Colley filed in district court under the FLSA and state wage and hour laws.

The Scherzinger Corporation
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-165460 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (513) 684-3750.